



October 23, 2001

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251

OR2001-4805

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155843 .

The City of Houston ("city") received requests for Offense Report Nos. 068325599W ("Exhibit 2"), 049839599W ("Exhibit 3"), 033892899N ("Exhibit 4"), 056213099F ("Exhibit 5"), 071070599Q ("Exhibit 6"), 071503599E ("Exhibit 7"), and 076955199Y ("Exhibit 8"). You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

First, you claim that Exhibits 5 and 8 are excepted from disclosure under section 552.101 in conjunction with 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. However, section 58.007(c) is inapplicable to these two exhibits because the incidents at issue do not involve a "child" as defined by section 51.02(2) of the Family Code. A "child" is a person who is

¹ Requested Offense Report No. 0511882998 was addressed in Open Records Letter No. 2001-4541 (2001). That decision concluded that the city may withhold the report under section 552.108(a)(1), with the exception of basic information, which must be released under section 108(c).

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(2)(A)-(B). In this instance, the suspect referenced in Exhibit 5 was nine years of age, and the juvenile referenced in Exhibit 8 was 6 years of age. With respect to Exhibit 8, however, you further claim that portions of the submitted information is excepted under section 552.130, which excepts from disclosure information that relates to a driver's license issued by an agency of this state. You must therefore withhold the driver's license numbers in Exhibit 8, but release the remainder of the information.² In addition, the social security numbers in Exhibit 8 may be confidential if they were obtained or are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); *see* Open Records Decision No. 622 (1994).

Second, you claim that Exhibit 2 is excepted from disclosure by section 552.108(a)(1). Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Third, you claim that Exhibits 3, 4, 5, 6, and 7 are excepted from disclosure under §552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In that regard, you assert that the requested information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits 3, 4,

² We further address Exhibit 5 in later parts of this letter.

5, 6, and 7. However, with respect to withholding Exhibits 2-7, we note that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

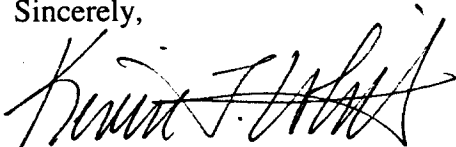
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. White", written over a horizontal line.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 155843

Enc. Submitted documents

c: Ms. Tonya L. Sullivan
Cash & Allen, L.L.P.
600 Travis, Suite 6710
Houston, Texas 77002
(w/o enclosures)